

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.Rev.Pet.No. 30 of 2007(C)

AGAINST THE ORDER DATED 19/12/2006 IN CRMP 5484 2006 IN
CC.133/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA
.....

REVN. PETITIONER: PETITIONER/PETITIONER/ACCUSED:

PHILIPHOSE ABRAHAM,
S/O.C.P. ABRAHAM, AGED 53,
'CHIRAYATHU REJISH VILLA', KUMPALAMPOIKA,
PATHANAMTHITTA.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. VARGHESE NINAN, S/O.M.V. NINAN,
MUNDAPLACKAMANNIL, MUNNAMTHANAM MURI,
KUNNAMTHANAM VILLAGE.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI
SRI.SAJITH KUMAR V.
SMT.G.R.LEKSHMI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J

CRL.R.P.No.30 of 2007

Dated this the 23rd day of February, 2007

ORDER

Revision petitioner who is the accused police officer has sought for setting aside the order of the court below in Crl.M.P.No. 5484/06 in C.C.133/01 with respect to the offence under Sections 324, 326 and 506 of IPC. The petitioner/accused had applied for discharge vide Section 245(2) r/w 197 of Code of criminal Procedure. The trial court dismissed the application on the ground that the predecessor of the JFCM had earlier considered the same question as to the requirement sanction under Section 197 of Criminal Procedure Code and held that sanction is not required as assaulting a person while on duty is not part of official duty.

2. It is pointed out that the above order was issued at the pre-cognizance stage and that the court below ought to have considered the contention of the petitioner/accused. I find that at that time revision petitioner was not in the picture at all. Hence, the court below ought to have considered the contentions

of the revision petitioner on merits and disposed of the matter instead of dismissing the application relying on the observation of the court at pre-cognizance stage.

2. In the circumstances, I am inclined to set aside the order of the court below. The matter is remitted back to the trial court. J.F.C.M., Thiruvalla is directed to consider the contentions of the revision petitioner and dispose of the discharge application on merits.

The Criminal Revision Petition is disposed of as above.

**K.R.UDAYABHANU,
JUDGE**

csl

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Crl.R.P.No.899 of 2001

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